

TX 045196565
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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MAILED DATE

AUG 07 2007

OF THE ORDER

IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING SUNOCO PARTNERS
MARKETING & TERMINALS L.P.
RN100214626

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2006-0942-MLM-E

I. JURISDICTION AND STIPULATIONS

At its **JUL 25 2007** agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Sunoco Partners Marketing & Terminals L.P. ("Sunoco") under the authority TEX. WATER CODE chs. 7 and 26, and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, through the Enforcement Division, and Sunoco appear before the Commission and together stipulate that:

1. Sunoco owns and operates a wastewater treatment facility located at 2300 North Highway 347 in Nederland, Jefferson County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. Sunoco has discharged wastewater into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
4. The Commission and Sunoco agree that the Commission has jurisdiction to enter this Agreed Order, and that Sunoco is subject to the Commission's jurisdiction.
5. Sunoco received notice of the violations alleged in Section II ("Allegations") on or about June 5, 2006.
6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Sunoco of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
7. An administrative penalty in the amount of Twenty-Eight Thousand Seventy-Eight Dollars (\$28,078) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Sunoco has paid Twenty-Two Thousand Four Hundred Sixty-Two Dollars (\$22,462) of the administrative penalty and Five Thousand Six Hundred Sixteen Dollars (\$5,616) is deferred contingent upon Sunoco's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If

Sunoco fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Sunoco to pay all or part of the deferred penalty.

8. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
9. The Executive Director of the TCEQ and Sunoco have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
10. The Executive Director recognizes that Sunoco implemented the following corrective measures at the Facility:
 - a. On May 23, 2006, discontinued the use of naphtha; decommissioned the parts washer bin; provided secondary containment for the wash bay and cleaned the No. 1 Lube Sump; repaired and recoated the grit tank and the oil and water separator; and began monitoring stormwater outfalls daily and will sample when discharges occur;
 - b. On July 21, 2006, amended Manifest No. 3372217 to include the transporter's identification and phone numbers;
 - c. On July 31, 2006, cleaned the affected areas from the four unauthorized discharges, removed the debris, and applied fresh dirt; and recoated and repaired the grit tank;
 - d. On August 7, 2006, amended the Notice of Registration to include equalization tank nos. 1513 and 1514; and
 - e. On September 1, 2006, developed and implemented a new waste determination and record keeping procedure.
11. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Sunoco has not complied with one or more of the terms or conditions in this Agreed Order.
12. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
13. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Sunoco is alleged to have:

1. Failed to prevent the unauthorized discharge of hydrocarbon onto the ground, in violation of 30 TEX. ADMIN. CODE § 335.4, as documented during an investigation conducted on April 13, 2006. Specifically, the first discharge was located at the bunker area and impacted an area of 30 feet by 50 feet; the second discharge was located at the sump adjacent to Ship Dock 1 and impacted an area 4 feet by 15 feet; the third discharge was located at the manifold under Department of Energy jurisdiction and impacted an area of 4 feet by 15 feet; and the fourth discharge was located on the north side of the maintenance building and impacted an area of 4 feet by 15 feet.
2. Failed to update the Notice of Registration ("NOR"), in violation of 30 TEX. ADMIN. CODE § 335.6(c), as documented during an investigation conducted on April 13, 2006. Specifically, two wastewater ponds and two wastewater tanks were not on the NOR.
3. Failed to put the state transporter's identification and phone numbers on Manifest No. 3372217, in violation of 30 TEX. ADMIN. CODE § 335.10(b), as documented during an investigation conducted on April 13, 2006.
4. Failed to keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal, in violation of 30 TEX. ADMIN. CODE § 335.9(a)(1), as documented during an investigation conducted on April 13, 2006. Specifically, hazardous waste determination and classification documents for friable asbestos (waste code 00093111) and lab chemicals (waste code 456100H) were not being maintained.
5. Failed to obtain authorization to process a hazardous waste (naphtha), in violation of 30 TEX. ADMIN. CODE § 335.2(a), as documented during an investigation conducted on April 13, 2006. Specifically, spent naphtha from a parts washer bin was discharged into a nearby sump and pumped into tank nos. 1513 and 1514 and then the tank bottoms (wastewater) were discharged to aeration tank no. 1506.
6. Failed to conduct a hazardous waste determination and waste classification for spent naphtha generated in the parts washer bin, in violation of 30 TEX. ADMIN. CODE § 335.62 and 40 CODE OF FEDERAL REGULATIONS § 262.11, as documented during an investigation conducted on April 13, 2006.
7. Failed to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance with the permit conditions, in violation of 30 TEX. ADMIN. CODE § 305.125(5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001151000, Operational Requirements No. 1, as documented during an investigation conducted on April 13, 2006. Specifically, the oil and water separator and grit tank were observed to be severely corroded. The grit tank was leaking as a result of the corrosion. Additionally, the synthetic liners in the two ballast ponds were in disrepair.

8. Failed to prevent the discharge of industrial wastes to a stormwater outfall, in violation of TEX. WATER CODE § 26.121(c), as documented during an investigation conducted on April 13, 2006. Specifically, spillage of industrial wastes were observed adjacent to the stormwater ditch at the No. 1 Lube Sump and wastewater at the washer bay was observed flowing over the secondary containment and running downhill.
9. Failed to collect effluent samples from stormwater outfalls 002, 003, and 004 at the frequency required by the permit, in violation of 30 TEX. ADMIN. CODE § 319.5(b) and TPDES Permit No. WQ0001151000, Effluent Limitations and Monitoring Requirements No. 1, Outfalls 002, 003, and 004, as documented during an investigation conducted on April 13, 2006.
10. Failed to prevent the introduction of a waste not authorized by permit into the wastewater treatment facility, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0001151000, Permit Conditions No. 4.d., as documented during an investigation conducted on April 13, 2006. Specifically, spent naphtha was vacuumed from the parts washer bin and placed into a sump which lifted the waste to the equalization tanks (Tank Nos. 1513 and 1514).

III. DENIALS

Sunoco generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Sunoco pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and Sunoco's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Sunoco Partners Marketing & Terminals L.P., Docket No. 2006-0942-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Sunoco shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, conduct a hazardous waste determination on the spent naphtha, in accordance with 30 TEX. ADMIN. CODE § 335.62;

- b. Within 60 days after the effective date of this Agreed Order, repair the ballast pond liners; or submit and implement a closure plan which includes an implementation date of not longer than 90 days from the date the plans are approved for the ponds, in accordance with 30 TEX. ADMIN. CODE § 335.8(b)(1) and TPDES Permit No. WQ0001151000, Operational Requirements No. 11.c; and
- c. Within 75 days after the effective date of this Agreed Order, submit written certification as described below to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b., and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

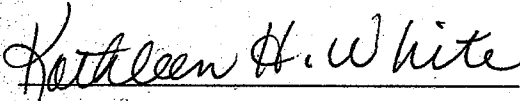
Manager, Water Section
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

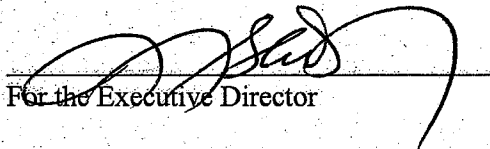
3. The provisions of this Agreed Order shall apply to and be binding upon Sunoco. Sunoco is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Sunoco fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Sunoco's failure to comply is not a violation of this Agreed Order. Sunoco shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Sunoco shall notify the Executive Director within seven days after Sunoco becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

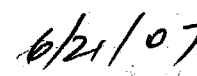
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Sunoco shall be made in writing to the Executive Director. Extensions are not effective until Sunoco receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Sunoco in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Sunoco, or three days after the date on which the Commission mails notice of the Order to Sunoco, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY


For the Commission


For the Executive Director

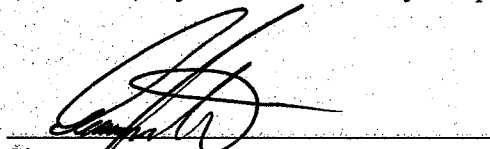

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

Date March 22, 2007

David A. Justin
Name (Printed or typed)
Authorized Representative of
Sunoco Partners Marketing & Terminals L.P.

Title Vice President - Operations

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.